

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

SIDNEY NAIMAN, on behalf of himself and all  
Others similarly situated,

Case No. 2:22 cv 02531

Plaintiff,

- against -

**ANSWER**

BIG THINK CAPITAL, INC.,

Defendant.

-----X

Pursuant to Fed. R. Civ. P. 12(a), Defendant Big Think Capital, Inc. (“Big Think”), for its Answer to Plaintiff Sidney Naiman’s (“Naiman”) Complaint states as follows:

**NATURE OF ACTION**

1. The Defendant can neither admit nor deny the allegations set forth in Paragraph “1” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.
2. The Defendant can neither admit nor deny the allegations set forth in Paragraph “2” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.
3. The Defendant admits the allegations set forth in Paragraph “3” of the Complaint.
4. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “4” of Plaintiff’s Complaint.
5. The Defendant can neither admit nor deny the allegations set forth in Paragraph “5” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.
6. The Defendant denies the allegations contained in Paragraph “6” of the Complaint.

7. The Defendant can neither admit nor deny the allegations set forth in Paragraph “7” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

### **THE PARTIES**

8. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “8” of Plaintiff’s Complaint.

9. The Defendant admits the allegations set forth in Paragraph “9” of the Complaint.

### **JURISDICTION AND VENUE**

10. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “10” of Plaintiff’s Complaint and leaves all questions of law for the Court for the time of trial.

11. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “11” of Plaintiff’s Complaint and leaves all questions of law for the Court for the time of trial.

12. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “12” of Plaintiff’s Complaint and leaves all questions of law for the Court for the time of trial.

### **TCPA BACKGROUND**

13. The Defendant can neither admit nor deny the allegations set forth in Paragraph “13” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

14. The Defendant can neither admit nor deny the allegations set forth in Paragraph "14" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

15. The Defendant can neither admit nor deny the allegations set forth in Paragraph "15" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

16. The Defendant can neither admit nor deny the allegations set forth in Paragraph "16" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

17. The Defendant can neither admit nor deny the allegations set forth in Paragraph "17" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

### **FACTUAL ALLEGATIONS**

18. The Defendant admits the allegations contained in Paragraph "18" of the Complaint.

19. The Defendant denies the allegations contained in Paragraph "19" of the Complaint, except admits that Defendant does utilize a marketing campaign.

20. The Defendant denies the allegations contained in Paragraph "20" of the Complaint.

21. The Defendant denies the allegations contained in Paragraph "21" of the Complaint.

22. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “22” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

23. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “23” of the Complaint.

24. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “24” of the Complaint.

25. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “25” of the Complaint.

26. The Defendant denies the allegations contained in Paragraph “26” of the Complaint.

27. The Defendant denies the allegations contained in Paragraph “27” of the Complaint.

28. The Defendant can neither admit nor deny the allegations contained in Paragraph “28” of the Complaint.

29. The Defendant can neither admit nor deny the allegations contained in Paragraph “29” of the Complaint.

30. The Defendant can neither admit nor deny the allegations contained in Paragraph “30” of the Complaint.

31. The Defendant can neither admit nor deny the allegations contained in Paragraph “31” of the Complaint.

32. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “32” of the Complaint.

33. The Defendant denies the allegations contained in Paragraph "33" of the Complaint.

34. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "34" of the Complaint.

35. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "35" of the Complaint.

36. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "36" of the Complaint.

37. The Defendant denies the allegations contained in Paragraph "37" of the Complaint.

38. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "38" of the Complaint.

39. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "39" of the Complaint.

40. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "40" of the Complaint.

41. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "41" of the Complaint.

42. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "42" of the Complaint.

43. The Defendant denies the allegations contained in Paragraph "43" of the Complaint.

## **CLASS ACTION ALLEGATIONS**

44. The Defendant can neither admit nor deny the allegations set forth in Paragraph "44" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

45. The Defendant can neither admit nor deny the allegations set forth in Paragraph "45" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

46. The Defendant can neither admit nor deny the allegations set forth in Paragraph "46" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

47. The Defendant denies the allegations contained in Paragraph "47" of the Complaint.

48. The Defendant denies the allegations contained in Paragraph "48" of the Complaint.

49. The Defendant can neither admit nor deny the allegations set forth in Paragraph "49" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

50. The Defendant denies the allegations contained in Paragraph "50" of the Complaint.

51. The Defendant denies the allegations contained in Paragraph "51" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

52. The Defendant denies the allegations contained in Paragraph "52" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

53. The Defendant denies the allegations contained in Paragraph "53" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

54. The Defendant denies the allegations contained in Paragraph "54" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

55. The Defendant denies the allegations contained in Paragraph "55" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

56. The Defendant denies the allegations contained in Paragraph "56" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

57. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "57" of the Complaint.

58. The Defendant denies the allegations contained in Paragraph "58" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

59. The Defendant denies the allegations contained in Paragraph "59" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

60. The Defendant denies the allegations contained in Paragraph "60" of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

61. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph "61" of the Complaint.

#### **FIRST CAUSE OF ACTION**

62. The Defendant repeats the statements and denials in Paragraphs "1" through "61" in response to Paragraph "62".

63. The Defendant denies the allegations contained in Paragraph "63" of the Complaint.

64. The Defendant denies the allegations contained in Paragraph “64” of the Complaint.

65. The Defendant denies the allegations contained in Paragraph “65” of the Complaint.

66. The Defendant denies the allegations contained in Paragraph “66” of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

67. The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

68. The claims of the Complaint are barred by the failure to mitigate damages.

**THIRD AFFIRMATIVE DEFENSE**

69. At all times relevant, Big Think acted in good faith.

**FOURTH AFFIRMATIVE DEFENSE**

70. The actions or inactions of Big Think did not cause Naiman any actual or concrete harm and, therefore, this Court has no subject matter jurisdiction.

**FIFTH AFFIRMATIVE DEFENSE**

71. The claims of at least some of the putative class members are barred by the doctrines of acquiescence, waiver, estoppel, and ratification.

**SIXTH AFFIRMATIVE DEFENSE**

72. The claims of the Complaint are barred by Naiman’s unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

73. At all times relevant to the Complaint, the TCPA violated the First Amendment to the United States Constitution.

**EIGHTH AFFIRMATIVE DEFENSE**

74. Defendant received consent to call the Phone Number.

**NINTH AFFIRMATIVE DEFENSE**

75. Naiman and the putative class members lack standing.

**TENTH AFFIRMATIVE DEFENSE**

76. The claims of at least some of the putative class members are barred by the applicable statutes of limitations.

**ELEVENTH AFFIRMATIVE DEFENSE**

77. To the extent the Complaint seeks class relief, claims of the putative class are barred by the doctrine of judicial estoppel.

**TWELFTH AFFIRMATIVE DEFENSE**

78. The imposition of statutory damages would violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

**THIRTEENTH AFFIRMATIVE DEFENSE**

79. To the extent the Complaint seeks class relief, the claims of at least some of the putative class members are barred by res judicata.

**ADDITIONAL DEFENSES**

80. Big Think gives notice that it intends to rely on such other defenses as may become available during the discovery proceedings in this case and hereby reserves the right to amend this Answer in order to assert such defenses.

WHEREFORE, Answering Defendant respectfully prays for judgment as follows:

a. Dismissing the Complaint in its entirety, with prejudice;

- b. Awarding the Answering Defendant the costs and disbursements of this action; and
- c. Such other and further relief as this Court deems just, equitable and proper.

Dated: Melville, New York  
June 2, 2022



---

JEFFREY S. ETTERINGER, ESQ.  
SCHWARTZ ETTERINGER, PLLC  
*Attorneys for Defendant*  
445 Broad Hollow Road, Suite 205  
Melville, New York 11747  
631-777-2401

To: PARONICH LAW, P.C.,  
*Attorneys for Plaintiff*  
350 Lincoln Street, Suite 2400  
Hingham, MA 02043  
(617) 485-0018